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Subject:—

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C O N T E N T S.

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Office of the R.L.A.

The Brass and Copper (Control) Order, 1945 made by the Central Government under rule 81(2) of the Defence of India Rules is saved by the addition, by Government Notification in the Civil Supplies Department No. 805/IV, dated the 1st October 1946, of the items "non-ferrous metals" and "Brass, Copper and Alloy minimum utensils" in the Schedule I to the Bombay Essential Commodities and Cattle (Control) Act, 1946. The question raised for the consideration of the R.L.A. is whether the powers of the Central Government under that Order can now be exercised by the Provincial Government.

Section 5 of the Bombay Essential Commodities and Cattle (Control) Act, 1946 provides :-

> "Every order made under the Defence of India Rules in respect of any essential commodity or cattle and every appointment made, license granted, permit issued and direction given in respect of the same under the said rules or such order, and which was in force immediately before the commencement of this Act, shall in so far as it could validity have been made, granted, issued or given, as the case may be, under the provisions of this Act, be deemed to have been made, granted, issued or given thereunder."

By virtue of that provision the Brass and Copper (Control) Order, 1945, is deemed to have been validity made by the Provincial Government in so far as it could be made under section 4(1). The power to operate the orders made under section 4(1) vests in the Provincial Government. Consequently any reference to the Central Government in the Brass and Copper (Control) Order would be deemed to be a reference to the Provincial Government. It would therefore be competent for the Provincial Government now to exercise the powers of the Central Government under the Brass and Copper (Control) Order. D.V.Vyas

Sd/-

Remembrancer of Legal Affairs.

U.O.R. to C.S.D.No. 979,
Dated the 28th January 1947.

SNT/9.7.

Office of the R.L.A.

The Additional Secretary, Reconstruction Department suggests that ——

(i) All importing firms should be requested to report to Government periodically all the sales which they may make of imported oil engines along with the names, addresses etc. of the persons to whom such sales have been made, and the prices charged;

(ii) No sale of oil engine in the district should be permitted except under a condition that the buyer presents a certificate from the Collector or local Dputy Director of Agriculture/ now District Agricultural Officer – recommending him for purchase;

(iii) After purchase is effected the certificate should be returned by the seller to the issuing authority with a note of the actual price charged on it;

(iv) All sales of engines not supported by a certificate should be illegal.

The Remembrancer of Legal Affairs is requested to examin the legal implications of the above proposal.

"Oil engine" is not an "essential commodity" within the meaning of clause (a) of section 2 of the Essential Supplies (Temporary Powers) Act, 1946, nor is it an "essential commodity" within the meaning of clause (2) of section 2 read with Schedule I to the Bombay Essential Commodities and Cattle (Control) Act, 1946. It would not therefore be possible for Government to impose restrictions on the sale of oil engines as proposed.

Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to R.C.D., No. 3164 , dated the 1st April 1947.

SHT/9.7.

Office of the R.L.A.

As the Subsidised Milk Distribution Scheme is discontinued with effect from 1st March 1947, the following questions are raised for R.L.A's advice:-

(1) Whether the cancellation of the City of Bombay and Bombay Suburban District Milk (Supply to Children and Expectant and Nursing Mothers) Order, 1944, would in any way affect ---

(i) the prosecution cases pending before the Court, and

(ii) the prosecution cases which are under investigation;

(2) If the prosecution of cases referred to in (1) above is likely to be affected, which course should be adopted as would save the pending as well as future prosecutions; and

(3) Whether the object could be achieved by deleting clauses 9, 13 and 16 and allowing the rest of the Order to stand until all the prosecution cases are decided.

Anent the first question, 'Milk' being an "essential commodity" within the meaning of clause (2) of section 2 of the Bombay Essential Commodities and Cattle (Control) Act, 1944 the City of Bombay and Bombay Suburban District Milk (Supply Children and Expectant and Nursing Mothers) Orderg 1944, which was in force immediately before the commencement of the said Act, can, in pursuance of section 5, be deemed not to have been made under section 4 of the said Act. There is no provision made in the City of Bombay and Bombay Suburban District Milk (Supply to Children and Expectant and Nursing Mothers) Order, 1944, prescribing penalty for breach or contravention of the provisions of the said Order. Sub-section (1) of section 10 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, however, provides that if any person contravenes any

Order made or deemed to be made under section 4, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. Even if the said Order is cancelled, the Bombay Essential Commodities and Cattle (Central) Act remains in force. That being the case, the repeal or cancellation of the Order would not affect the liability for punishment incurred under section 10 of the Bombay Essential Commodities and Cattle (Central) Act, 1946, and any investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the Order had not been repealed. (See the observations of Knower J. in Madhosingh v. King Emperor 23 Patna 240 at p.250) Consequently, even if the Milk Order is cancelled, it would not in any way affect the pending or future criminal proceedings.

In view of the above reply, questions (2) and (3) do not survive.

Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to Controller of Rationing No. 2728 dated the 20th March 1947.

SNT/9.8.

Office of the R.L.A.

The Bombay Charcoal Trade Licensing Order, 1944, and the Bombay Firewood Trade Licensing Order, 1944, were originally published in the Bombay Government Gazette. As the orders extended to the whole of the Province of Bombay, were made by the Provincial Government and were of a general nature, the normal way of publishing them was in the official gazette, as in the case of statutes extending to the whole Province. Press-notes were also then issued and published in the newspapers having circulation in the area to which the order was in the first instance made applicable. The Supply Commissioner who made the order had approved of this mode of publication. It would seem, therefore, that there was sufficient compliance with the requirements of Rule 119 of the Defence of India Rules in the initial publication of the Orders. Compare Mahadeo P.D. v. King Emperor I.L.R. 24 Patna 781.

2. Moreover, even if it be held as insufficient compliance, under Rule 119(1B) as amended, the failure to comply shall not affect the validity of the order. The Orders must thus be treated as quite valid. Under section 5 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, every order in respect of any essential commodity in so far as it could validity have been made under the provisions of that Act be deemed to have been made thereunder. The validity of the Orders cannot be challenged on the ground of the alleged defects in their original publication under the Defence of India Rules. This provision is reproduced in section 6(2) of the Act.

3. Besides, the mode of publication now followed is precisely of the same character as was originally adopted - viz the initial publication of the Order in the Gazette (which was made once for all) followed by explanatory Press-

Press-notes in the area affected as and when the Order was extended to that area, and that mode was approved by the authority issuing the Orders. The Orders cannot be said to have been actually made under the Bombay Essential Commodities and Cattle (Control) Act, 1946; for they are not now made for the first time but are being merely extended. The mode of publication prescribed by Rule 3 of the Rules made under that Act does not apply to such orders; and it is, therefore, unnecessary to publish the Orders themselves in the Newspapers as dintinguished from the fact of the Order which is the distinction the District Magistrate has in view upon the authority of what was said in Emperor v. Mhatraji Bhau Patil, 47 Bombay Law Reporter, p.143 at p.144.

4. In any case the method of publication already adipted would in fact be sufficient to prove actual knowledge on the part of offending dealers; and when evidence suggesting knowledge is on record, the prosecution need not fall back on the constructive knowledge - whether it be of the presumptive or conclusive character, which follows from the mere adiption of a mode of publication contemplated by Rule 119 of the Defence of India Rules or section 6 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, which is modelled upon those rules.

5. No further action on the lines suggested by the District Magistrate of Ahmedabad, is, therefore, necessary.

Sd/- P.M.Lal.
15/5.

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 5011, dated the 16th May 1947.

SNT/9.7.

Office of the R.L.A.

Government proposes to prohibit the use of charcoal for industrial purposes particularly by catering establishments and motor vehicles fitted with gas plants and to restrict the use thereof for domestic purposes. The R.L.A. is requested to advise whether the Bombay Charcoal Trade Licinsing Order, 1944, can be suitably amended for the purpose in vies and to suggest how best the proposal can be legally enforced.

2. The Bombay Charcoal Trade Licensing Order, 1944 is mainly intended for licensing of traders. Sub-clause (2) of clause 12 not doubt puts restrictions on acquisition of charcoal by private consumers in excess of quantities normally required by them. But this clause is within the scope of the order under the scheme of which it is essential to prohibit possession of surplus quantities by persons who are not dealers. It would not therefore be legally feasible to amend the Bombay Charcoal Trade Liceinsing Order, 1944 to prohibit the use of charcoal for any purpose other than domestic .

3. To give effect to the present proposal a separate self contained order may be issued under section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946 (Bom. XXII of 1946). The order may provide that no person shall acquire or use charcoal for the purposes of any catering establishment, motor vehicle fitted with gas plant or industry, except under a licence. Suitable definitions of "catering establishment" and "industry" may be given to cover the cases to which the restriction is to apply. Suitable directions may then be issued to the licensed dealers under clause 11-A of the Charcoal Trade Liceinsing Order to regulate the sale of charcoal by dealers for the purposes stated above.

Sd/- D.V.Vyas.
Remembrancer of Legal Affairs

SNT/9.7

U.R. to C.S.D.No. 2080, dated the 3rd March 1947.

Office of the R.L.A.

Section 15(2) of the Bombay Essential Commodities and Cattle (Control) Act, 1946, provides that no suit or other legal proceedings shall lie against the Crown for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made or deemed to be made under sections 4. In the present case it is undisputed that the freezing and acquisition orders were made by Government in good faith with a view to obtain the supply of gunnies and twine, nor is the validity of these orders disputed. Consequently section 15(2) offered full protection to Government against any action of the merchants for the loss if any suffered by them in respect of their forward contracts. In fact, section 15(2) is clearly intended to provide legal protection in such cases. Consequently it does not appear that the merchants can have any valid claim against Government in this respect. Government will no doubt consider the equity of paying a fair and reasonable price.

Sd/- P.M.LAD.
22/8.

Remembrancer of Legal Affairs.

H.H.(C.S.D.).

SMT/9.7.

Office of the R.L.A.

Withholding release order.

Bombay Essential Commodities and Cattle (Control) Act, 1946,

and

R.L.A's opinion No. 13144 dated 19.12.47.

Section 15(2) of the Bombay Essential Commodities and Cattle (Control) Act, 1946, provides that no suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused anything which is in good faith done or intended to be done in pursuance of any order made or deemed to be made under section 4. If the refusal to issue a release order is done in good faith, section 15(2) gives full protection and no suit for damages can lie against Government. Whether or not the refusal to issue a release order is done in good faith is a question of fact to be decided on the particular facts of each case. A thing shall be deemed to be done in "good faith" where it is in fact done honestly whether it is done negligently or not (General Clauses Act section 3(20)). The refusal to issue the release order cannot apparently be justified on any ground intended to promote the object of the enactment. It is sought to be justified on the ground of retribution for the default made by Mr. Manalal in carrying out the directions of a permit. Whether such default is punishable has been separately considered in R.L.A's opinion No. 13144 dated the 19th December 1947. In any case, witholding of a release order is not a legal method of punishing the past default. It is, therefore, likely that courts would not treat the refusal as "honest", particularly if it is likely to result in loss as is represented on behalf of Mr. Manalal. If there is any truth in his representation and if the stock is not likely to be needed by Government either for itself or for any bona fide consumer, it is desirable that Government should issue a release order rather than take the risk of a suit for damages.

Ans to A.R.D.D. No. 13147 19/12/47.

Sd/- P.M.LAD.18/12.
Remembrancer of Legal Affairs.

Office of the R.L.A.

Disposal of ground nut oil cake.

Bombay Essential Commodities and Cattle (Control) Act, 1946.

It appears that the Dy.Director of Agriculture, Head-Quarters, Poona, issued a permit on 25th April 1947, under Civil Supplies Department Order No.45-IV-A dated 15th July 1946 in favour of the Belvandi Sugar Farm Ltd. to purchase and transport 280 tons of oil cakes from Manalal Tribhuvandas, Oil Mill, Dohad. The control rate of oil cake then was Rs. 60 per ton including the cost of sound second-hand gunny bags without any holes or patching or stitching or darning on the surface of the bags ex-godown of the mill (see Civil Supplies Department Order No.45(f)IV-A dated 15th July 1946. It is reported by the Dy.Director of Agriculture that Messrs. Manalal Tribhuvandas had asked for higher prices and on their refusal to pay higher prices the stock was not released as per permit, while the Collector, Panch Mahals, reports that the firm never directly refused delivery at control rates but insisted that the Belvandi Sugar Farm Company should choose cake from both the qualities- dry and wet. The Civil Supplies Department Order No. 45(f)(IV-A dated the 15th July 1946 controlling the rates of oil cakes has since been superseded (vide C.S.D. Notification No. 45(j)IV-A dated 26th August 1947). The Remembrancer of Legal Affairs. is requested to advise whether the release order issued in favour of the Belvandi Sugar Farm Ltd. issued under the old order dated 15th July 1946 but dishonoured by Messrs. Manalal Tribhuvandas can be enforced by extending the validity period and whether Messrs. Manalal Tribhuvandas can be made to sell the quantity to Belvandi Sugar Farm Ltd. at the old rate of Rs. 60 per ton from the present stock of "free cake".

It appears that the proposal made by the A.R.D. is not legally feasible. The Civil Supplies Department Order No.45-IV-A dated 15th July 1946 whereunder the release order was issued in favour of Belvandi Sugar Farm

. had been superseded by Agriculture and Rural Development Department Order No.99-G(b) dated 18th July 1947. Consequently the release order issued in favour of the Belvandi Sugar Farm Ltd. has also lapsed and i s validity can no longer be extended.

The Civil Supplies Department Order No.45-IV-A dated 15th July 1946 whereunder the release order was issued in the present case prohibited removal from the godown of place, or disposal of the stock of ground-nut oil cake except under a permit issued by the Dy.Director of Agriculture in charge of the Division in which the stocks are held. This order did not direct the sale of the stock to a person to whom a permit has been issued. Consequently the refusal if any of Messrs. Manalal Tribhuvandas to sell the stock to the Belvandi Sugar Farm Ltd. would not amount to an offence but if Messrs. Manalal Tribhuvandas had demanded a rate higher than the controlled rate fixed under Civil Supplies Department Order No.45(f)-IV dated 15th July 1946, it would have been possible to prosecute Manalal Tribhuvandas for breach of that order. However, in view of the conflicting reports of the Director of Agriculture and the Collector of Panch Mahals the prosecution of Messrs. Manalal Tribhuvandas would not be tenable.

Sd/- P.M.LAD.
18/2.

Remembrancer of Legal Affairs.

U.R. to A & R,D.D., No. 13142, dated the 19th December 1947.